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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/729,845 | 12/08/2003 | Seann Pavlik | 4442-13 | 8305 |
| 23117 | 7590 | 05/31/2006 | | EXAMINER |
| NIXON & VANDERHYE, PC | | | | NGUYEN, DINH Q |
| 901 NORTH GLEBE ROAD, 11TH FLOOR | | | ART UNIT | PAPER NUMBER |
| ARLINGTON, VA 22203 | | | 3752 | |

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|---------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/729,845 | PAVLIK, SEANN |
| | Examiner | Art Unit |
| | Dinh Q. Nguyen | 3752 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 March 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4, 7-13, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4, 7-13, 17 and 18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claims 1 and 17 are objected to because of the following informalities: in claim 1, line 10, "between 5-10 microns" should read --between 5-100 microns--. In claim 17, line 11, between 5-10 microns" should read --between 5-100 microns--.
2. Claims 5, 6, 14, 15, and 19-21 are objected to because not in compliance with revised amendment practice 37 CFR 1.121, the text of all pending claims including withdrawn claims must be submitted each time.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1, 3, 4, 7-11, 13, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanwood in view of Palestrant.

The statement of intended use carries no patentable weight.

Stanwood discloses an extendable misting apparatus comprising a housing 10 having a recess surrounded by a radial flange 16/17 that secured by screw 18 to a support structure 14, a hydraulic fitting 11, a bearing block 26 in the recess, a hollow piston rod 27 with a misting head with at last one misting nozzle 21, and a spring 34 located in a chamber (see figure 10). Stanwood does not teach the misting nozzle

having an orifice sized to deliver water droplets 5-100 microns in diameter. However, Palestrant discloses a misting that could be adapted to be used with an overhead misting system having an orifice sized to deliver water droplets 5-100 microns in diameter (see column 1, lines 18+).

With respect to claims 7 and 16, to have misting nozzles arranged at 90⁰ intervals is an obvious matter of design choice to a person of ordinary skill in the art.

With respect to claim 9, it is an obvious matter of design choice to a person of ordinary skill in the art to configure the apparatus of Stanwood in view of Palestrant for using in an outdoor ceiling as suggested in column 1, line 14.

5. Claim 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanwood in view of Palestrant as applied to claims 1, 3, 4, 7-11, 13, and 16-18 above, and further in view of Ash.

Stanwood in view of Palestrant teaches all the limitations of the claims except for an o-ring in the bearing block. However, Ash discloses an extendable misting apparatus with a housing 11, a bearing block with o-ring 16 (see figure 1). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Stanwood and Palestrant with an o-ring as suggested by Ash. Doing so would provide sealing for the misting device.

Response to Arguments

6. Applicant's arguments filed 1/23/06 and 3/17/06 have been fully considered but they are not persuasive.

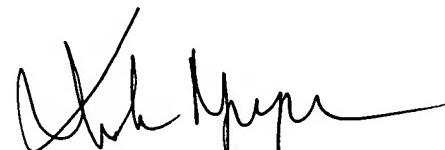
7. Applicant's arguments with respect to claims 1-4, 7-13, 17-18 have been considered but are moot in view of the new ground(s) of rejection.
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Dinh Q Nguyen
Primary Examiner
Art Unit 3752

dqn